

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION**

MARK A. BARRY, M.D.,

Plaintiff,

v.

MEDTRONIC, INC.

Defendant.

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Civil Action 1:14-cv-00104

Judge Ron Clark

OPPOSED MOTION TO WITHDRAW AND SUBSTITUTE LEAD COUNSEL

David G. Henry, counsel for Plaintiff Dr. Mark Barry (“Dr. Barry”), files this Motion to Withdraw and Substitute Lead Counsel, and requests the Court grant Mr. Henry permission to withdraw as counsel for Dr. Barry in this case.

1. Mr. Henry is currently lead counsel for Dr. Barry. Defendant Medtronic, Inc. (“Medtronic”) now states that it believes Mr. Henry is a witness on certain issues. Although Mr. Henry does not believe the issues raised by Medtronic require withdrawal under Rules 1.7, 1.9, 3.08 of the Texas Disciplinary Rules of Professional Conduct, the ABA model Rules, or any other rule or law, rather than subject himself to litigation on this issue, Mr. Henry asks to withdraw and have his co-counsel, Mr. James L. Reed, take his place as lead counsel.

2. Dr. Barry agrees to this motion.

3. David Healey, Mitch Ackal, and Michael Ellis will also remain as counsel for Dr. Barry.

4. Medtronic has stated that Gray Reed & McGraw, PC should be disqualified from representing Dr. Barry in this case and that Mr. Henry’s withdrawal does not resolve issues related to representation of Dr. Barry. However, Medtronic has not presented Dr. Barry with a proposed motion to disqualify.

5. Plaintiff agrees to institute an ethical wall as to David Henry and David Lisch relating to confidential information received from Medtronic and working as counsel for Dr. Barry in this lawsuit. Messrs. Henry and Lisch will not participate in the prosecution of this case as trial counsel or in assisting with the prosecution of this case as part of the trial team. The Protective Order will be amended to exclude David Henry and David Lisch from being able to review confidential documents/data.

6. Should Medtronic file a motion to disqualify the Gray Reed firm, Dr. Barry will respond in due course. Regardless of whether Medtronic files such a motion, the substitution of lead counsel and withdrawal of Mr. Henry should be permitted at this time.

Therefore, Plaintiff requests an order from the Court allowing Mr. Henry to withdraw and substituting Mr. Reed as lead counsel

Dated: June 23, 2015

Respectfully submitted,

GRAY, REED & McGRAW, PC

By: /s/ David G. Henry, Sr.

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CERTIFICATE OF CONFERENCE

I hereby certify that on June 23, 2015, I conferred with Defendant's counsel, and it opposes the motion. While Dr. Barry strongly disagrees with Medtronic's position and will address it when presented properly, Medtronic has asked for Dr. Barry to put this in the certificate: "because while Medtronic believes that Mr. Henry should no longer be counsel of record for Plaintiff, it believes that this was also the case when this issue was first raised by the Court in May, 2014. Medtronic will be filing a Motion to Disqualify that extends to the entire Gray Reed firm, based on Mr. Henry's representations to this Court and his subsequent testimony at his deposition on June 9, 2015."

/s/ Jim Reed
Jim L. Reed

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 23 2015, a true and correct copy of the foregoing document was served upon all known counsel of record through the Court's ECF system pursuant to Federal Rule of Civil Procedure 5(b)(3) and Local Rule CV-5.

/s/ Michael D. Ellis
Michael D. Ellis